

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: WESTWIND MANOR RESORT ASSOCIATION, INC., <i>et al.</i> Debtors.	§ § § §	Case No. 19-50026 (DRJ) (Chapter 11) Jointly Administered
---------------------------------------------------------------------------------	------------------	-----------------------------------------------------------------

FORCE 10 AGENCY SERVICES LLC,
TRUSTEE OF THE CREDITOR TRUST

Plaintiff,

VS.

ADV. P. NO. 21-03035

BRENDAN M. FLAHERTY
BMF PROPERTIES, LLC;
WARRIOR GOLF, LLC;
WHOLESALE GOLF SUPPLY &
SERVICES, INC.;
DOT COM ASSET MANAGEMENT, LTD.;
WARRIOR CUSTOM STORAGE & RV, LP,
RIVERBOUND STORAGE
MANAGEMENT, LLC
CIMARRON FOOD AND BEVERAGE, INC.;
WOLF CREEK FOOD AND
BEVERAGE, LLC;
WARRIOR TENNESSEE FOOD AND
BEVERAGE, LLC;
DWIGHT BECKSTRAND
(D/B/A BECKSTRAND LAW OFFICES);
REED A. COLEY; AND
COLEYDOCTER, INC.

Defendants.

**TRUSTEE'S FIRST AMENDED MOTION TO
STRIKE ANSWER**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS

WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE ON THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

TO THE HONORABLE DAVID R. JONES, CHIEF UNITED STATES BANKRUPTCY JUDGE: COMES NOW, PLAINTIFF FORCE 10 AGENCY SERVICES LLC, TRUSTEE OF THE CREDITOR TRUST in the above captioned consolidated Chapter 11 cases and files this Motion to Strike the Answer of Defendants BMF Properties, LLC; Warrior Golf, LLC; Wholesale Golf Supply & Services, Inc.; Dot Com Asset Management, Ltd.; and Warrior Custom Storage & RV, LP, and would respectfully show the Court as follows:

FACTUAL BACKGROUND

1. On March 3, 2021, Plaintiff Force 10 Agency Services, LLC, Trustee of the Creditor Trust in the abovementioned bankruptcy proceeding, filed its Complaint against multiple Defendants, including Defendants BMF Properties, LLC; Warrior Golf, LLC; Wholesale Golf Supply & Services, Inc.; Dot Com Asset Management, Ltd.; and Warrior Custom Storage & RV, LP (collectively, the “Unrepresented Defendants”).

2. On September 14, 2021, the Unrepresented Defendants filed a purported Answer to Plaintiff’s Complaint. However, this purported Answer was filed on the Unrepresented Defendants’ behalf by the individual Brendan M. Flaherty, also a Defendant in this adversary proceeding. Upon information and belief, Mr. Flaherty is not a licensed attorney and nothing in the record suggests that he is.

ARGUMENT AND AUTHORITIES

3. It is well established law that although individuals have the right to represent themselves or proceed *pro se*, corporations are fictional legal persons who may only be represented by licensed counsel.¹ This is the case even when the person seeking to represent the corporation is its president and major stockholder.² When a corporation does not hire counsel to represent it, the court may dismiss its claims if it is a plaintiff, or strike its defenses if it is a defendant.³

4. The Unrepresented Defendants have filed an appearance without any representation by a licensed attorney. Instead, as can be seen on the Answer, Brendan Flaherty has answered on behalf of each of the Unrepresented Defendants, simply stating that he is the President or Managing Member of each.⁴ As discussed in *In re K.M.A.*, a Managing Member or President of an entity is still not able to represent the entity in this Court; only a licensed attorney can. Mr. Flaherty is not a licensed attorney and is unable to represent the Unrepresented Defendants in this proceeding.

5. Because the Unrepresented Defendants have not entered a proper appearance and Answer, Plaintiff asks this Court to strike the Answer of the Unrepresented Defendants, as is proper according to the relevant caselaw.

CONCLUSION

Plaintiff asks this Court to strike the Answer (Dkt. 18) of Defendants BMF Properties, LLC; Warrior Golf, LLC; Wholesale Golf Supply & Services, Inc.; Dot Com Asset Management, Ltd.; and Warrior Custom Storage & RV, LP, and for such other relief to which Plaintiff may be entitled.

¹ *Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993); *Memon v. Allied Domecq QSR*, 385 F.3d 871, 873 (5th Cir. 2004).

² *In re K.M.A., Inc.*, 652 F.2d 398, 399 (5th Cir. 1981).

³ *See Donovan v. Road Rangers Country Junction, Inc.*, 736 F.2d 1004, 1005 (5th Cir. 1981) (affirming a trial court's striking of a non-represented corporation's defenses).

⁴ *See* Dkt. 18 at 23.

Respectfully Submitted,

WALSTON BOWLIN, LLP

/s/ Clifford H. Walston

CLIFFORD WALSTON

cliff@walstonbowlin.com

State Bar No. 24037666

4299 San Felipe Street, Suite 300

Houston, Texas 77027

(713) 300-8700

(713) 583-5020 Fax

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that I have served all Parties and counsel in this matter with the foregoing pleading in accordance with Rule 5(b) of the Federal Rules of Civil Procedure as adopted by the Federal Rules of Bankruptcy Procedure on the 29th day of November, 2021.

/s/ Cliff Walston

Cliff Walston